

**SUBSTITUTE TO THE AMENDMENT
IN THE NATURE OF A SUBSTITUTE
OFFERED BY MR. TOWNS**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Community Revitalization and Brownfield Cleanup Act
4 of 1999”.

5 (b) TABLE OF CONTENTS.—The table of contents of
6 this Act is as follows:

Sec. 1. Short title and table of contents.

Sec. 2. Findings.

**TITLE I—BROWNFIELD REMEDIATION AND ENVIRONMENTAL
CLEANUP**

Sec. 101. Definitions.

Sec. 102. Inventory and site assessment.

Sec. 103. Grants for revolving loan programs.

Sec. 104. Limitations on use of funds.

Sec. 105. Reports.

Sec. 106. Effect on other laws.

Sec. 107. Regulations.

Sec. 108. Authorizations of appropriations.

**TITLE II—INNOCENT LANDOWNER, PROSPECTIVE PURCHASER,
AND CONTIGUOUS PROPERTY OWNER LIABILITY PROTECTION**

Sec. 201. Innocent landowners.

Sec. 202. Limitations on liability for response costs for prospective purchasers.

Sec. 203. Contiguous or nearby properties.

**TITLE III—SELLER LIABILITY RELIEF AND STATE VOLUNTARY
RESPONSE PROGRAMS**

Sec. 301. State voluntary response programs.

TITLE IV—LIABILITY RELIEF

Sec. 401. Ratification of municipal solid waste settlement policy.

Sec. 402. Small business and homeowner municipal solid waste exemption.

Sec. 403. De micromis exemption.
Sec. 404. Ability to pay.
Sec. 405. Recycling transactions.

TITLE V—STUDY

Sec. 501. Study of future funding needs.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Brownfields are parcels of land that contain
4 or contained abandoned or under-used commercial or
5 industrial facilities, the expansion or redevelopment
6 of which is complicated by the presence or potential
7 presence of hazardous substances, pollutants, or con-
8 taminants.

9 (2) Brownfields, which may number in the hun-
10 dreds of thousands nationwide, threaten the environ-
11 ment, devalue surrounding property, erode local tax
12 bases, and prevent job growth.

13 (3) Despite potentially great productive value,
14 prospective developers may avoid brownfields be-
15 cause of the uncertainty of cleanup and development
16 costs, which leads to construction on undeveloped so-
17 called greenfield sites, creating infrastructure prob-
18 lems and reducing the amount of open spaces.

19 (4) Cleanup and redevelopment of brownfields
20 would reduce environmental contamination, encour-
21 age job growth, and curb the development of green-
22 fields.

1 (5) State voluntary programs to address envi-
2 ronmental contamination, and addressing liability
3 concerns to encourage developers and current owners
4 to invest in brownfield sites, can be very effective in
5 promoting the cleanup and redevelopment of
6 brownfields.

7 **TITLE I—BROWNFIELD REMEDI-**
8 **ATION AND ENVIRONMENTAL**
9 **CLEANUP**

10 **SEC. 101. DEFINITIONS.**

11 In this title:

12 (1) ADMINISTRATOR.—The term “Adminis-
13 trator” means the Administrator of the Environ-
14 mental Protection Agency.

15 (2) BROWNFIELD SITE.—The term “brownfield
16 site” means a parcel of land that contains or con-
17 tained abandoned or under-used commercial or in-
18 dustrial facilities, the expansion or redevelopment of
19 which may be complicated by the presence or poten-
20 tial presence of hazardous substances, pollutants, or
21 contaminants.

22 (3) ENVIRONMENT.—The term “environment”
23 has the meaning given the term in section 101 of the
24 Comprehensive Environmental Response, Compensa-
25 tion, and Liability Act of 1980 (42 U.S.C. 9601).

1 (4) FACILITY.—The term “facility” has the
2 meaning given the term in section 101 of the Com-
3 prehensive Environmental Response, Compensation,
4 and Liability Act of 1980 (42 U.S.C. 9601).

5 (5) GRANT.—The term “grant” includes a co-
6 operative agreement.

7 (6) HAZARDOUS SUBSTANCE.—The term “haz-
8 ardous substance” has the meaning given the term
9 in section 101 of the Comprehensive Environmental
10 Response, Compensation, and Liability Act of 1980
11 (42 U.S.C. 9601).

12 (7) INDIAN TRIBE.—The term “Indian tribe”
13 has the meaning given the term in section 101 of the
14 Comprehensive Environmental Response, Compensa-
15 tion, and Liability Act of 1980 (42 U.S.C. 9601).

16 (8) LOCAL GOVERNMENT.—The term “local
17 government” means any city, county, town, town-
18 ship, parish, village, regional council, or other gen-
19 eral purpose political subdivision of a State; any In-
20 dian tribe; Guam, the Northern Mariana Islands, the
21 Virgin Islands, American Samoa, the District of Co-
22 lumbia, and the Trust Territory of the Pacific Is-
23 lands, or any general purpose political subdivision
24 thereof; any redevelopment agency that is chartered
25 or otherwise sanctioned by a State or other unit of

1 local government; or any combination of local gov-
2 ernments.

3 (9) PERSON.—The term “person” has the
4 meaning given the term in section 101 of the Com-
5 prehensive Environmental Response, Compensation,
6 and Liability Act of 1980 (42 U.S.C. 9601).

7 (10) POLLUTANT OR CONTAMINANT.—The term
8 “pollutant or contaminant” has the meaning given
9 the term in section 101 of the Comprehensive Envi-
10 ronmental Response, Compensation, and Liability
11 Act of 1980 (42 U.S.C. 9601).

12 (11) RELEASE.—The term “release” has the
13 meaning given the term in section 101 of the Com-
14 prehensive Environmental Response, Compensation,
15 and Liability Act of 1980 (42 U.S.C. 9601).

16 (12) RESPONSE ACTION.—The term “response
17 action” has the meaning given the term “response”
18 in section 101 of the Comprehensive Environmental
19 Response, Compensation, and Liability Act of 1980
20 (42 U.S.C. 9601).

21 (13) SITE ASSESSMENT.—

22 (A) IN GENERAL.—The term “site assess-
23 ment” means an investigation that determines
24 the nature and extent of a release or potential
25 release of a hazardous substance or pollutant or

1 contaminant at a brownfield site and meets the
2 requirements of subparagraph (B).

3 (B) INVESTIGATION.—For the purposes of
4 this paragraph, an investigation that meets the
5 requirements of this subparagraph—

6 (i) shall include—

7 (I) an onsite evaluation; and

8 (II) if necessary, sufficient test-
9 ing, sampling, and other field-data-
10 gathering activities to accurately de-
11 termine whether the brownfield site is
12 contaminated and whether threats to
13 human health and the environment
14 are posed by the release of hazardous
15 substances, pollutants, or contami-
16 nants at the brownfield site; and

17 (ii) may include—

18 (I) review of such information re-
19 garding the brownfield site and pre-
20 vious uses as is available at the time
21 of the review;

22 (II) an offsite evaluation, if ap-
23 propriate; and

24 (III) a marketing analysis.

1 (14) STATE.—The term “State” has the mean-
2 ing given the term in section 101 of the Comprehen-
3 sive Environmental Response, Compensation, and
4 Liability Act of 1980 (42 U.S.C. 9601).

5 **SEC. 102. INVENTORY AND SITE ASSESSMENT.**

6 (a) IN GENERAL.—The Administrator shall establish
7 a program to award grants to local governments to inven-
8 tory brownfield sites, which may include associated rivers,
9 streams, or lakes or mine-scarred land, and to conduct site
10 assessments of such brownfield sites.

11 (b) SCOPE OF PROGRAM.—

12 (1) GRANT AWARDS.—To carry out subsection
13 (a), the Administrator may, on approval of an appli-
14 cation, provide financial assistance to a local govern-
15 ment.

16 (2) GRANT APPLICATION PROCEDURE.—The
17 Administrator shall establish a grant application
18 procedure for this section. The Administrator may
19 include in such procedure requirements of the Na-
20 tional Contingency Plan, to the extent that those re-
21 quirements are relevant and appropriate to the pro-
22 gram under this section.

23 (3) APPROVAL OF APPLICATION.—

1 (A) IN GENERAL.—In making a decision
2 whether to approve an application under this
3 subsection, the Administrator shall—

4 (i) consider the need of the local gov-
5 ernment for financial assistance to carry
6 out inventories and site assessments under
7 this section;

8 (ii) consider the ability of the appli-
9 cant to carry out inventories and site as-
10 sessments under this section;

11 (iii) consider the ability of the appli-
12 cant to manage a grant; and

13 (iv) consider such other factors as the
14 Administrator considers relevant to carry
15 out this section.

16 (B) GRANT CONDITIONS.—As a condition
17 of awarding a grant under this section, the
18 Administrator—

19 (i) shall require the recipient of the
20 grant to notify the State in which the re-
21 cipient is located of the receipt of the
22 grant; and

23 (ii) may, on the basis of the criteria
24 considered under subparagraph (A), attach

1 such other conditions to the grant as the
2 Administrator determines appropriate.

3 (4) GRANT AMOUNT.—The amount of a grant
4 awarded to any local government under this section
5 for inventory and site assessment of one or more
6 brownfield sites shall not exceed \$500,000.

7 (5) TERMINATION OF GRANTS.—If the Admin-
8 istrator determines that a local government that re-
9 ceives a grant under this section is in violation of a
10 condition of a grant, the Administrator may termi-
11 nate the grant made to the local government and re-
12 quire full or partial repayment of the grant.

13 (6) AUTHORITY TO AWARD GRANTS TO
14 STATES.—The Administrator may award a grant to
15 a State under the program established under this
16 section if the Administrator determines that a grant
17 to the State is necessary in order to facilitate the re-
18 ceipt of funds by one or more local governments that
19 otherwise do not have the capabilities, such as per-
20 sonnel and other resources, to manage grants under
21 the program.

22 (c) TRAINING AND TECHNICAL ASSISTANCE.—The
23 Administrator may provide training and technical assist-
24 ance to individuals and organizations, as appropriate, to

1 inventory brownfield sites and conduct site assessments or
2 cleanup of brownfield sites.

3 **SEC. 103. GRANTS FOR REVOLVING LOAN PROGRAMS.**

4 (a) IN GENERAL.—

5 (1) ESTABLISHMENT.—The Administrator shall
6 establish a program to award grants to be used by
7 local governments to capitalize revolving loan funds
8 for the cleanup of brownfield sites.

9 (2) LOANS.—The loans may be provided by the
10 local government to finance cleanups of eligible
11 brownfield sites by the local government, or by an
12 owner or developer of an eligible brownfield site (in-
13 cluding a local government).

14 (b) SCOPE OF PROGRAM.—

15 (1) IN GENERAL.—

16 (A) GRANTS.—In carrying out subsection
17 (a), the Administrator may award a grant to a
18 local government that submits an application
19 that is approved by the Administrator.

20 (B) USE OF GRANT.—The grant shall be
21 used by the local government to capitalize a re-
22 volving loan fund to be used for cleanup of one
23 or more brownfield sites, which may include as-
24 sociated rivers, streams, or lakes or mine-
25 scarred land.

1 (C) GRANT APPLICATION PROCEDURE.—

2 The Administrator shall establish a grant appli-
3 cation procedure for this section. The Adminis-
4 trator may include in such procedure require-
5 ments of the National Contingency Plan, to the
6 extent that those requirements are relevant and
7 appropriate to the program under this section.

8 (2) GRANT APPROVAL.—In determining wheth-
9 er to award a grant under this section, the Adminis-
10 trator shall consider—

11 (A) the need of the local government for fi-
12 nancial assistance to clean up brownfield sites,
13 taking into consideration the financial resources
14 available to the local government;

15 (B) the ability of the local government to
16 ensure that the applicants repay the loans in a
17 timely manner;

18 (C) the extent to which the cleanup of
19 brownfield sites would reduce health and envi-
20 ronmental risks caused by the release of haz-
21 ardous substances, pollutants, or contaminants
22 at, or from, brownfield sites;

23 (D) the demonstrable potential of
24 brownfield sites for stimulating economic devel-

1 opment or creation of recreational areas on
2 completion of cleanup;

3 (E) the demonstrated ability of the local
4 government to administer such a loan program;

5 (F) the demonstrated experience of the
6 local government regarding brownfield sites and
7 the reuse of contaminated land, including
8 whether the local government has received any
9 grant under the Comprehensive Environmental
10 Response, Compensation, and Liability Act of
11 1980 (42 U.S.C. 9601 et seq.) to assess
12 brownfield sites, except that applicants who
13 have not previously received such a grant may
14 be considered for awards under this section;

15 (G) the experience of administering any
16 loan programs by the entity, including the loan
17 repayment rates; and

18 (H) such other factors as the Adminis-
19 trator considers relevant to carry out this sec-
20 tion.

21 (3) GRANT AMOUNT.—The amount of a grant
22 made to an applicant under this section shall not ex-
23 ceed \$500,000. The Administrator may make an
24 award under this section in an amount up to
25 \$1,000,000 if the Administrator determines that

1 such action would achieve particularly significant en-
2 vironmental and economic benefits.

3 (c) GRANT AGREEMENTS.—Each grant under this
4 section for a revolving loan fund shall be made pursuant
5 to a grant agreement. At a minimum, the grant agreement
6 shall include provisions that ensure the following:

7 (1) COMPLIANCE WITH LAW.—The local govern-
8 ment will include in all loan agreements a require-
9 ment that the loan recipient shall comply with all
10 laws applicable to the cleanup, and shall ensure that
11 the cleanup protects human health and the environ-
12 ment.

13 (2) REPAYMENT.—The local government will
14 require repayment of the loan consistent with this
15 section.

16 (3) USE OF FUNDS.—The local government will
17 use the funds, including repayment of principal, in-
18 terest, and fees, solely for purposes of establishing
19 and capitalizing a loan program in accordance with
20 this title and of cleaning up brownfield sites.

21 (4) REPAYMENT OF FUNDS.—The local govern-
22 ment will require in each loan agreement, and take
23 necessary steps to ensure, that the loan recipient will
24 use the loan funds solely for cleaning up brownfield
25 sites, and will require the return of any excess funds

1 immediately on a determination by the appropriate
2 local official that the cleanup has been completed.

3 (5) NONTRANSFERABILITY.—A local govern-
4 ment receiving a grant under this section may not
5 transfer funds received under the grant to any other
6 local government unless the Administrator agrees to
7 the transfer in writing.

8 (6) NOTICE TO STATE.—The local government
9 will notify the State in which the local government
10 is located of the receipt of the grant and of the iden-
11 tity of recipients of loans made under the revolving
12 loan fund.

13 (d) AUDITS.—

14 (1) IN GENERAL.—The Inspector General of
15 the Environmental Protection Agency shall audit a
16 portion of the grants awarded under this section to
17 ensure that all funds provided under those grants
18 are used for the purposes set forth in this section.

19 (2) FUTURE GRANTS.—The result of the audit
20 shall be taken into account in awarding any future
21 grants to the local government.

22 (e) TERMINATION OF GRANTS.—If the Administrator
23 determines that a local government that receives a grant
24 under this section is in violation of a condition of a grant,
25 the Administrator may terminate the grant made to the

1 local government and require full or partial repayment of
2 the grant.

3 (f) **AUTHORITY TO AWARD GRANTS TO STATES.**—

4 The Administrator may award a grant to a State under
5 the program established under this section at the request
6 of a local government in the State if the Administrator
7 determines that a grant to the State is necessary in order
8 to facilitate the receipt of funds by one or more local gov-
9 ernments that otherwise do not have the capabilities, such
10 as personnel and other resources, to manage grants under
11 the program.

12 **SEC. 104. LIMITATIONS ON USE OF FUNDS.**

13 (a) **EXCLUDED FACILITIES.**—

14 (1) **FACILITIES.**—A grant for site inventory and
15 assessment under section 102 or to capitalize a re-
16 volving loan fund under section 103 may not be used
17 for any activity involving—

18 (A) a facility or portion of a facility that
19 is the subject of an order or other action under
20 section 106(a) of the Comprehensive Environ-
21 mental Response, Compensation, and Liability
22 Act of 1980 (42 U.S.C. 9606(a)), or a response
23 action under section 104 of the Comprehensive
24 Environmental Response, Compensation, and
25 Liability Act of 1980 (42 U.S.C. 9604);

1 (B) a facility included, or proposed for in-
2 clusion, on the National Priorities List main-
3 tained by the President under the Comprehen-
4 sive Environmental Response, Compensation,
5 and Liability Act of 1980 (42 U.S.C. 9601 et
6 seq.);

7 (C) an NPL-caliber facility, as defined in
8 paragraph (2);

9 (D) a facility that is subject to corrective
10 action under section 3004(u) or 3008(h) of the
11 Solid Waste Disposal Act (42 U.S.C. 6924(u)
12 or 6928(h)) to which a corrective action permit
13 or order has been issued or modified to require
14 the implementation of corrective measures;

15 (E) any land disposal unit with respect to
16 which a closure notification under subtitle C of
17 the Solid Waste Disposal Act (42 U.S.C. 6921
18 et seq.) has been submitted and closure require-
19 ments have been specified in a closure plan or
20 permit;

21 (F) a facility at which there has been a re-
22 lease of a polychlorinated biphenyl and that is
23 subject to the Toxic Substances Control Act (15
24 U.S.C. 2601 et seq.);

1 (G) a facility with respect to which an ad-
2 ministrative or judicial order or decree requir-
3 ing cleanup has been issued or entered into by
4 the President under—

5 (i) the Comprehensive Environmental
6 Response, Compensation, and Liability Act
7 of 1980 (42 U.S.C. 9601 et seq.);

8 (ii) the Solid Waste Disposal Act (42
9 U.S.C. 6901 et seq.);

10 (iii) the Federal Water Pollution Con-
11 trol Act (33 U.S.C. 1251 et seq.);

12 (iv) the Toxic Substances Control Act
13 (15 U.S.C. 2601 et seq.); or

14 (v) the Safe Drinking Water Act (42
15 U.S.C. 300f et seq.);

16 (H) the portion of a facility at which as-
17 sistance for response activities may be obtained
18 under subtitle I of the Solid Waste Disposal Act
19 (42 U.S.C. 6991 et seq.) from the Leaking Un-
20 derground Storage Tank Trust Fund estab-
21 lished by section 9508 of the Internal Revenue
22 Code of 1986; or

23 (I) a facility owned or operated by a de-
24 partment, agency, or instrumentality of the

1 United States, except for land held in trust by
2 the United States for an Indian tribe.

3 (2) DEFINITION.—For purposes of paragraph
4 (1), the term “NPL-caliber facility” means a facility
5 for which the President, in consultation with the
6 State concerned, has prepared or is preparing a haz-
7 ardous ranking system scoring package or that satis-
8 fies such other definition as the Administrator may
9 promulgate by regulation. The term does not include
10 a facility for which the President—

11 (A) has obtained a score under the haz-
12 ardous ranking system; and

13 (B) based on that score, has made a deter-
14 mination not to list on the National Priorities
15 List.

16 (3) EXCEPTION.—Notwithstanding paragraph
17 (1), the President may, on a facility-by-facility basis,
18 allow a grant under section 102 to be used for an
19 activity involving any facility listed in subparagraph
20 (D), (E), (F), (G)(ii), (G)(iii), (G)(iv), (G)(v), (H),
21 or (I) of paragraph (1) if the President finds that
22 such use would promote economic development while
23 still protecting human health and the environment.
24 In the case of a facility listed in subparagraph (I),
25 the President may use the authority in the preceding

1 sentence only if the facility is not a facility described
2 in subparagraph (A), (B), (C), or (G)(i).

3 (b) FINES AND COST-SHARING.—A grant made
4 under this title may not be used to pay any fine or penalty
5 owed to a State or the Federal Government, or to meet
6 any Federal cost-sharing requirement.

7 (c) RESPONSIBILITY FOR CLEANUP ACTION.—Funds
8 made available under this title may not be used to relieve
9 a local government of the commitment or responsibilities
10 of the local government under State law to assist or carry
11 out cleanup actions at brownfield sites.

12 **SEC. 105. REPORTS.**

13 (a) IN GENERAL.—Not later than one year after the
14 date of enactment of this Act, and not later than January
15 31 of each of the 3 calendar years thereafter, the Adminis-
16 trator shall prepare and submit a report describing the
17 results of each program established under this title to—

18 (1) the Committees on Commerce and on
19 Transportation and Infrastructure of the House of
20 Representatives; and

21 (2) the Committee on Environment and Public
22 Works of the Senate.

23 (b) CONTENTS OF REPORT.—Each report shall, with
24 respect to each of the programs established under this
25 title, include a description of—

1 (1) the number of applications received by the
2 Administrator during the preceding calendar year;

3 (2) the number of applications approved by the
4 Administrator during the preceding calendar year;
5 and

6 (3) the allocation of assistance under sections
7 102 and 103 among the local governments.

8 **SEC. 106. EFFECT ON OTHER LAWS.**

9 Nothing in this title changes, modifies, or otherwise
10 affects the liability of any person or the obligations im-
11 posed or authorities provided under any other law or regu-
12 lation, including—

13 (1) the Comprehensive Environmental Re-
14 sponse, Compensation, and Liability Act of 1980 (42
15 U.S.C. 9601 et seq.);

16 (2) the Solid Waste Disposal Act (42 U.S.C.
17 6901 et seq.);

18 (3) the Federal Water Pollution Control Act
19 (33 U.S.C. 1251 et seq.);

20 (4) the Toxic Substances Control Act (15
21 U.S.C. 2601 et seq.); and

22 (5) the Safe Drinking Water Act (42 U.S.C.
23 300f et seq.).

1 **SEC. 107. REGULATIONS.**

2 (a) IN GENERAL.—The Administrator may issue
3 such regulations as are necessary to carry out this title.

4 (b) PROCEDURES AND STANDARDS.—The regulations
5 shall include such procedures and standards as the Admin-
6 istrator considers necessary, including procedures and
7 standards for evaluating an application for a grant sub-
8 mitted under this title or for a loan under a revolving loan
9 program for which a grant is provided under section 103.

10 **SEC. 108. AUTHORIZATIONS OF APPROPRIATIONS.**

11 (a) SITE ASSESSMENT PROGRAM.—To carry out sec-
12 tion 102, there is authorized to be appropriated to the Ad-
13 ministrator \$35,000,000 for each of fiscal years 2000
14 through 2004.

15 (b) GRANTS FOR REVOLVING LOAN PROGRAMS.—To
16 carry out section 103, there is authorized to be appro-
17 priated to the Administrator \$65,000,000 for each of fis-
18 cal years 2000 through 2004.

19 (c) STATE VOLUNTARY RESPONSE PROGRAMS.—For
20 each of the first 5 fiscal years commencing after the date
21 of enactment of this Act, \$15,000,000 is authorized to be
22 appropriated to the Administrator for assistance to States
23 to develop or enhance State voluntary response programs
24 pursuant to title III.

1 (d) AVAILABILITY OF FUNDS.—Amounts appro-
2 priated under this section shall remain available until ex-
3 pended.

4 **TITLE II—INNOCENT LAND-**
5 **OWNER, PROSPECTIVE PUR-**
6 **CHASER, AND CONTIGUOUS**
7 **PROPERTY OWNER LIABILITY**
8 **PROTECTION**

9 **SEC. 201. INNOCENT LANDOWNERS.**

10 (a) ENVIRONMENTAL SITE ASSESSMENT.—Section
11 107 of the Comprehensive Environmental Response, Com-
12 pensation, and Liability Act of 1980 (42 U.S.C. 9607) is
13 amended by adding at the end the following new sub-
14 section:

15 “(o) INNOCENT LANDOWNERS.—

16 “(1) CONDUCT OF ENVIRONMENTAL ASSESS-
17 MENT.—A person who has acquired real property
18 after April 15, 1994, shall have made all appropriate
19 inquiry within the meaning of subparagraph (B) of
20 section 101(35) only if such person establishes that,
21 within 180 days prior to the time of acquisition, an
22 environmental site assessment of the real property
23 was conducted which meets the requirements of
24 paragraph (2).

1 “(2) DEFINITION OF ENVIRONMENTAL SITE AS-
2 SESSMENT.—For purposes of this subsection, the
3 term ‘environmental site assessment’ means an as-
4 sessment conducted in accordance with the stand-
5 ards set forth in the American Society for Testing
6 and Materials (ASTM) Standard E1527–94, titled
7 ‘Standard Practice for Environmental Site Assess-
8 ments: Phase I Environmental Site Assessment
9 Process’ or with alternative standards issued by rule
10 by the Administrator or promulgated or developed
11 by others and designated by rule by the Adminis-
12 trator. Before issuing or designating alternative
13 standards, the Administrator shall first conduct a
14 study of commercial and industrial practices con-
15 cerning environmental site assessments in the trans-
16 fer of real property in the United States. Any such
17 standards issued or designated by the Administrator
18 shall also be deemed to constitute commercially rea-
19 sonable and generally accepted standards and prac-
20 tices for purposes of this title. In issuing or desig-
21 nating any such standards, the Administrator shall
22 consider requirements governing each of the fol-
23 lowing:

1 “(A) Interviews of owners, operators, and
2 occupants of the property to determine informa-
3 tion regarding the potential for contamination.

4 “(B) Review of historical sources as nec-
5 essary to determine previous uses and occupan-
6 cies of the property since the property was first
7 developed. For purposes of this subparagraph,
8 the term ‘historical sources’ means any of the
9 following, if they are reasonably ascertainable:
10 recorded chain of title documents regarding the
11 real property, including all deeds, easements,
12 leases, restrictions, and covenants, aerial photo-
13 graphs, fire insurance maps, property tax files,
14 USGS 7.5 minutes topographic maps, local
15 street directories, building department records,
16 zoning/land use records, and any other sources
17 that identify past uses and occupancies of the
18 property.

19 “(C) Determination of the existence of re-
20 corded environmental cleanup liens against the
21 real property which have arisen pursuant to
22 Federal, State, or local statutes.

23 “(D) Review of reasonably ascertainable
24 Federal, State, and local government records of
25 sites or facilities that are likely to cause or con-

1 tribute to contamination at the real property,
2 including, as appropriate, investigation reports
3 for such sites or facilities; records of activities
4 likely to cause or contribute to contamination at
5 the real property, including landfill and other
6 disposal location records, underground storage
7 tank records, hazardous waste handler and gen-
8 erator records and spill reporting records; and
9 such other reasonably ascertainable Federal,
10 State, and local government environmental
11 records which could reflect incidents or activi-
12 ties which are likely to cause or contribute to
13 contamination at the real property.

14 “(E) A visual site inspection of the real
15 property and all facilities and improvements on
16 the real property and a visual inspection of im-
17 mediately adjacent properties, including an in-
18 vestigation of any hazardous substance use,
19 storage, treatment, and disposal practices on
20 the property.

21 “(F) Any specialized knowledge or experi-
22 ence on the part of the landowner.

23 “(G) The relationship of the purchase
24 price to the value of the property if
25 uncontaminated.

1 “(H) Commonly known or reasonably as-
2 certainable information about the property.

3 “(I) The obviousness of the presence or
4 likely presence of contamination at the prop-
5 erty, and the ability to detect such contamina-
6 tion by appropriate investigation.

7 If a copy or reasonable facsimile of a record is pub-
8 licly available by request (within reasonable time and
9 cost constraints) and the record is practically review-
10 able, the record shall be considered to be reasonably
11 ascertainable for purposes of this paragraph.

12 “(3) APPROPRIATE INQUIRY.—A person shall
13 not be treated as having made all appropriate in-
14 quiry under paragraph (1) unless—

15 “(A) the person has maintained a compila-
16 tion of the information reviewed and gathered
17 in the course of the environmental site assess-
18 ment;

19 “(B) the person exercised appropriate care
20 with respect to hazardous substances found at
21 the facility by taking reasonable steps to stop
22 on-going releases, prevent threatened future re-
23 leases of hazardous substances, and prevent or
24 limit human or natural resource exposure to

1 hazardous substances previously released into
2 the environment; and

3 “(C) the person provides full cooperation,
4 assistance, and facility access to persons au-
5 thorized to conduct response actions or natural
6 resource restoration at the facility, including
7 the cooperation and access necessary for the in-
8 stallation, integrity, operation, and maintenance
9 of any complete or partial response action or
10 natural resource restoration at the facility.”.

11 (b) EXCEPTION.—Section 107(b)(3)(a) of the Com-
12 prehensive Environmental Response, Compensation, and
13 Liability Act of 1980 (42 U.S.C. 9606(b)(3)(a)) is amend-
14 ed by inserting “(except as provided in subsection (o))”
15 after “exercised due care”.

16 (c) CONFORMING AMENDMENTS.—Section 101(35)
17 of the Comprehensive Environmental Response, Com-
18 pensation, and Liability Act of 1980 (42 U.S.C. 9601(35))
19 is amended—

20 (1) in subparagraph (A), by striking “, unless
21 the real property” and inserting “. A defendant
22 owner or operator of a facility may only assert under
23 section 107(b)(3) that an act or omission of a pre-
24 vious owner or operator of that facility did not occur

1 in connection with a contractual relationship if the
2 real property”; and

3 (2) in subparagraph (B)—

4 (A) by inserting “(as specified in section
5 107(o))” after “all appropriate inquiry”; and

6 (B) by striking “For purposes of the pre-
7 ceding sentence” and inserting “For purposes
8 of the application of the preceding sentence to
9 acquisitions occurring on or before April 15,
10 1994,”.

11 **SEC. 202. LIMITATIONS ON LIABILITY FOR RESPONSE**

12 **COSTS FOR PROSPECTIVE PURCHASERS.**

13 (a) LIMITATIONS ON LIABILITY.—Section 107 of the
14 Comprehensive Environmental Response, Compensation,
15 and Liability Act of 1980 (42 U.S.C. 9607) is further
16 amended by adding at the end the following new sub-
17 section:

18 “(p) LIMITATIONS ON LIABILITY FOR PROSPECTIVE
19 PURCHASERS.—To the extent the liability of a person,
20 with respect to a release or the threat of a release from
21 a facility, is based solely on subsection (a)(1), the person
22 shall not be liable under this Act if the person—

23 “(1) is a bona fide prospective purchaser of the
24 facility or an operator of a facility owned by such a
25 bona fide prospective purchaser;

1 “(2) does not impede the performance of any
2 response action or natural resource restoration at a
3 facility;

4 “(3) provided all legally required notices with
5 respect to the discovery or release of any hazardous
6 substances at the facility;

7 “(4) exercised appropriate care with respect to
8 hazardous substances found at the facility by taking
9 reasonable steps to—

10 “(A) stop ongoing releases;

11 “(B) prevent threatened future releases of
12 hazardous substances; and

13 “(C) prevent or limit human or natural re-
14 source exposure to hazardous substances pre-
15 viously released into the environment;

16 “(5) provides full cooperation, assistance, and
17 facility access to such persons as are authorized to
18 conduct response actions at the facility, including
19 the cooperation and access necessary for the installa-
20 tion, integrity, operation, and maintenance of any
21 complete or partial response action at the facility;
22 and

23 “(6) is not liable, or is not affiliated with any
24 other person that is liable, for response costs at the
25 facility, through any direct or indirect familial rela-

1 tionship, or any contractual, corporate, or financial
2 relationship other than that created by the instru-
3 ments by which title to the facility is conveyed or fi-
4 nanced.”.

5 (b) PROSPECTIVE PURCHASER AND WINDFALL
6 LIEN.—Section 107 of the Comprehensive Environmental
7 Response, Compensation, and Liability Act of 1980 (as
8 amended by subsection (a)) is amended by adding after
9 subsection (p) the following new subsection:

10 “(q) PROSPECTIVE PURCHASER AND WINDFALL
11 LIEN.—

12 “(1) IN GENERAL.—In any case in which the
13 United States has incurred unrecovered costs of re-
14 sponse not inconsistent with the National Contin-
15 gency Plan at a facility for which an owner of the
16 facility is not liable by reason of subsection (p), and
17 the conditions described in paragraph (3) are met,
18 the United States shall have a lien on the facility,
19 or may obtain, from the appropriate responsible
20 party or parties, a lien on other property or other
21 assurances of payment satisfactory to the Adminis-
22 trator, for the unrecovered costs.

23 “(2) AMOUNT; DURATION.—The lien—

24 “(A) shall be for an amount not to exceed
25 the lesser of the amount of the United States

1 costs of response not inconsistent with the Na-
2 tional Contingency Plan or the amount of the
3 increase in fair market value of the property at-
4 tributable to the response action at the time of
5 a subsequent sale or other disposition of the
6 property;

7 “(B) shall arise at the time costs are first
8 incurred by the United States with respect to a
9 response action at the facility;

10 “(C) shall be subject to the requirements
11 for notice and validity specified in subsection
12 (l)(3); and

13 “(D) shall continue until the earlier of sat-
14 isfaction of the lien or recovery of all United
15 States costs of response not inconsistent with
16 the National Contingency Plan incurred at the
17 facility, notwithstanding any statute of limita-
18 tions provided in section 113.

19 Nothing in this subsection prevents the United
20 States and a purchaser from entering into a settle-
21 ment at any time that extinguishes a lien under this
22 subsection.

23 “(3) CONDITIONS.—The conditions referred to
24 in paragraph (1) are the following:

1 “(A) RESPONSE ACTION.—An action for
2 which the United States has incurred unre-
3 covered costs of response not inconsistent with
4 the National Contingency Plan is carried out at
5 the facility.

6 “(B) FAIR MARKET VALUE.—The response
7 action increases the fair market value of the fa-
8 cility.”.

9 (c) DEFINITION OF BONA FIDE PROSPECTIVE PUR-
10 CHASER.—Section 101 of the Comprehensive Environ-
11 mental Response, Compensation, and Liability Act of
12 1980 (42 U.S.C. 9601) is amended by adding at the end
13 the following:

14 “(39) BONA FIDE PROSPECTIVE PURCHASER.—
15 The term ‘bona fide prospective purchaser’ means a
16 person who acquires ownership of a facility after the
17 date of enactment of the Community Revitalization
18 and Brownfield Cleanup Act of 1999 who can estab-
19 lish each of the following by a preponderance of the
20 evidence:

21 “(A) DISPOSAL PRIOR TO ACQUISITION.—
22 All active disposal of hazardous substances at
23 the facility occurred before the person acquired
24 the facility.

25 “(B) INQUIRY.—

1 “(i) IN GENERAL.—The person made
2 all appropriate inquiry as provided in sec-
3 tion 101(35)(B) into the previous owner-
4 ship and uses of the facility in accordance
5 with generally accepted good commercial
6 and customary standards and practices.

7 “(ii) STANDARDS.—The ASTM stand-
8 ards described in section 107(o)(2) or the
9 alternative standards issued or designated
10 by the President pursuant to that section
11 shall satisfy the requirements of this sub-
12 paragraph.

13 “(iii) RESIDENTIAL PROPERTY.—In
14 the case of property in residential or other
15 similar use at the time of purchase by a
16 nongovernmental or noncommercial entity,
17 a site inspection and title search that re-
18 veal no basis for further investigation shall
19 satisfy the requirements of this subpara-
20 graph.”.

21 “(C) NOTICES.—The person provided all
22 legally required notices with respect to the dis-
23 covery or release of any hazardous substances
24 at the facility.

1 “(D) CARE.—The person exercised appro-
2 priate care with respect to hazardous sub-
3 stances found at the facility by taking reason-
4 able steps to—

5 “(i) stop ongoing releases;

6 “(ii) prevent threatened future re-
7 leases of hazardous substances; and

8 “(iii) prevent or limit human or nat-
9 ural resource exposure to hazardous sub-
10 stances previously released into the envi-
11 ronment.

12 “(E) COOPERATION, ASSISTANCE, AND AC-
13 CESS.—The person provides full cooperation,
14 assistance, and facility access to such persons
15 as are authorized to conduct response actions at
16 the facility, including the cooperation and ac-
17 cess necessary for the installation, integrity, op-
18 eration, and maintenance of any complete or
19 partial response action at the facility.

20 “(F) RELATIONSHIP.—The person is not
21 potentially liable, or is not affiliated with any
22 other person that is potentially liable, for re-
23 sponse costs at the facility, through any direct
24 or indirect familial relationship, or any contrac-
25 tual, corporate, or financial relationship other

1 than that created by the instruments by which
2 title to the facility is conveyed or financed.”.

3 **SEC. 203. CONTIGUOUS OR NEARBY PROPERTIES.**

4 Section 107 of the Comprehensive Environmental Re-
5 sponse, Compensation, and Liability Act of 1980 (42
6 U.S.C. 9607) is further amended by adding at the end
7 the following new subsection:

8 “(r) CONTIGUOUS PROPERTIES.—(1) A person who
9 owns or operates real property, that is contiguous to or
10 otherwise similarly situated with respect to other real
11 property not owned or operated by that person, and that
12 is or may be contaminated by a release or threatened re-
13 lease of hazardous substances from such other real prop-
14 erty, shall not be considered to be an owner or operator
15 of a facility under subsection (a)(1) or (2) solely by reason
16 of such contamination, if such person establishes by a pre-
17 ponderance of the evidence that—

18 “(A) such person exercised appropriate care
19 with respect to those hazardous substances on or
20 under such person’s property by taking reasonable
21 steps to—

22 “(i) stop ongoing releases;

23 “(ii) prevent threatened future releases of
24 hazardous substances; and

1 “(iii) prevent or limit human, environ-
2 mental, or natural resource exposure to haz-
3 ardous substances previously released into the
4 environment;

5 “(B) such person did not cause, contribute to,
6 consent to, or exacerbate the release;

7 “(C) such person provided all legally required
8 notices with respect to the discovery of the release;

9 “(D) such person is not otherwise potentially
10 liable and is not affiliated with any other person
11 that is potentially liable for response costs at the fa-
12 cility, through any direct or indirect familial rela-
13 tionship, or any contractual, corporate, or financial
14 relationship other than that created by the instru-
15 ments by which title to the real property is conveyed
16 or financed;

17 “(E) at the time the person acquired the prop-
18 erty, the person conducted all appropriate inquiry
19 within the meaning of subparagraph (B) of section
20 101(35) and did not know and had no reason to
21 know of the presence of such contamination on the
22 property being acquired; and

23 “(F) such person provides full cooperation, as-
24 sistance, and access to such other persons as are au-
25 thorized to conduct response actions or natural re-

1 source restoration at the real property, including the
2 cooperation and access necessary for the installation,
3 integrity, operation, and maintenance of any com-
4 plete or partial response action or natural resource
5 restoration at the real property.

6 “(2) With respect to hazardous substances in ground-
7 water beneath such person’s property solely as a result
8 of subsurface migration in an aquifer from a source or
9 sources outside the property, appropriate care under para-
10 graph (1)(A) shall not require that such person either con-
11 duct groundwater investigations or install groundwater re-
12 mediation systems, except in accordance with the Environ-
13 mental Protection Agency’s May 24, 1995, “Policy To-
14 ward Owners of Property Containing Contaminated
15 Aquifers”.

16 “(3) Any person who at the time of acquisition of
17 real property had, or had reason to have had, the knowl-
18 edge specified in paragraph (1)(E) may nonetheless qual-
19 ify as a bona fide prospective purchaser under section
20 101(39) if such person otherwise would fall within that
21 definition.

22 “(4) Nothing in this subsection shall limit defenses
23 to liability that otherwise may be available to such persons
24 nor shall be construed to impose liability not otherwise im-
25 posed by section 107(a) on such persons.

1 “(5) The President may issue an assurance of no en-
2 forcement action under this Act to any such person and
3 may grant any such person protection against cost recov-
4 ery, and contribution actions pursuant to section
5 113(f)(2).”.

6 **TITLE III—SELLER LIABILITY**
7 **RELIEF AND STATE VOL-**
8 **UNTARY RESPONSE PRO-**
9 **GRAMS**

10 **SEC. 301. STATE VOLUNTARY RESPONSE PROGRAMS.**

11 Title I of the Comprehensive Environmental Re-
12 sponse, Compensation, and Liability Act of 1980 (42
13 U.S.C. 9601 et seq.) is amended by adding at the end
14 the following new section:

15 **“SEC. 127. STATE VOLUNTARY RESPONSE PROGRAMS.**

16 “(a) PURPOSES AND OBJECTIVES.—The purposes
17 and objectives of this section are—

18 “(1) to significantly increase the pace of re-
19 sponse activities at contaminated sites by promoting
20 and encouraging the creation, development, and en-
21 hancement of State voluntary response programs;
22 and

23 “(2) to benefit the public health and welfare
24 and the environment by cleaning up and returning

1 contaminated sites to economically productive or
2 other beneficial uses.

3 “(b) ASSISTANCE TO STATES.—The Administrator
4 shall provide technical, financial, and other assistance to
5 States to establish and enhance voluntary response pro-
6 grams. The Administrator shall encourage the States to
7 develop risk sharing pools, indemnity pools, or insurance
8 mechanisms to provide financing for response actions
9 under their voluntary response programs.

10 “(c) LIMITATION ON FEDERAL AUTHORITY TO LIST
11 ON NATIONAL PRIORITIES LIST.—Except as provided in
12 subsection (e), the President shall not list on the National
13 Priorities List the portion of a facility subject to a re-
14 sponse action plan approved under a State program quali-
15 fied under subsection (i)—

16 “(1) while substantial and continuous voluntary
17 response activities are being conducted in compliance
18 with the plan at that portion of the facility; or

19 “(2) after response activities conducted in com-
20 pliance with the plan at that portion of the facility
21 have been certified by the State as complete.

22 “(d) LIMITATION ON FEDERAL AUTHORITY TO RE-
23 COVER COSTS.—(1) Except as provided in subsection (e),
24 if substantial and continuous voluntary response activities
25 are being conducted at a voluntary response action site

1 in compliance with a response action plan approved under
2 a State program qualified under subsection (i) or if re-
3 sponse activities conducted at such a site in compliance
4 with the plan have been certified by the State as complete,
5 then the Administrator may not bring a claim under sec-
6 tion 107(a) for response costs incurred with respect to a
7 release or substantial threat of release of a hazardous sub-
8 stance addressed by the response action plan unless one
9 or more of the following conditions is met:

10 “(A) The Administrator determines that the re-
11 lease or threat of release may present an imminent
12 and substantial endangerment to the public health
13 or welfare or the environment.

14 “(B) The State requests the Administrator to
15 take action.

16 “(C) Conditions at the site that were unknown
17 to the State at the time the response action plan
18 was approved by the State are discovered, and such
19 conditions indicate, as determined by the Adminis-
20 trator or the State, that the response action does not
21 protect human health or the environment.

22 “(D) The cleanup of the site under the response
23 action plan of the State program no longer protects
24 human health or the environment, as determined by

1 the Administrator or the State, because of a change
2 or a proposed change in the use of the site.

3 “(2) For purposes of this subsection, the term ‘vol-
4 untary response action site’ means a site subject to a re-
5 sponse action plan under a State program qualified under
6 subsection (i).

7 “(3) Nothing in this subsection shall preclude the Ad-
8 ministrator from recovering costs incurred by the Admin-
9 istrator at a site before State approval of a response action
10 plan for that site.

11 “(e) FACILITIES INELIGIBLE FOR LIMITATIONS.—

12 “(1) FACILITIES.—The limitations on Federal
13 authority provided under subsections (c) and (d) do
14 not apply to any of the following facilities:

15 (A) a facility or portion of a facility that
16 is the subject of an order or other action under
17 section 106(a) of this Act, or a response action
18 under section 104 of this Act;

19 “(B) A facility included, or proposed for
20 inclusion, on the National Priorities List main-
21 tained by the President under this Act.

22 “(C) An NPL-caliber facility, as defined in
23 paragraph (2).

24 “(D) A facility that is subject to corrective
25 action under section 3004(u) or 3008(h) of the

1 Solid Waste Disposal Act (42 U.S.C. 6924(u)
2 or 6928(h)) to which a corrective action permit
3 or order has been issued or modified to require
4 the implementation of corrective measures.

5 “(E) Any land disposal unit with respect
6 to which a closure notification under subtitle C
7 of the Solid Waste Disposal Act (42 U.S.C.
8 6921 et seq.) has been submitted and closure
9 requirements have been specified in a closure
10 plan or permit.

11 “(F) A facility at which there has been a
12 release of a polychlorinated biphenyl and that is
13 subject to the Toxic Substances Control Act (15
14 U.S.C. 2601 et seq.).

15 “(G) A facility with respect to which an
16 administrative or judicial order or decree re-
17 quiring cleanup has been issued or entered into
18 by the President under—

19 “(i) this Act;

20 “(ii) the Solid Waste Disposal Act (42
21 U.S.C. 6901 et seq.);

22 “(iii) the Federal Water Pollution
23 Control Act (33 U.S.C. 1251 et seq.);

24 “(iv) the Toxic Substances Control
25 Act (15 U.S.C. 2601 et seq.); or

1 “(v) the Safe Drinking Water Act (42
2 U.S.C. 300f et seq.).

3 “(H) The portion of a facility at which as-
4 sistance for response activities may be obtained
5 under subtitle I of the Solid Waste Disposal Act
6 (42 U.S.C. 6991 et seq.) from the Leaking Un-
7 derground Storage Tank Trust Fund estab-
8 lished by section 9508 of the Internal Revenue
9 Code of 1986.

10 “(I) A facility owned or operated by a de-
11 partment, agency, or instrumentality of the
12 United States, except for land held in trust by
13 the United States for an Indian tribe.

14 “(2) DEFINITION.—For purposes of paragraph
15 (1), the term ‘NPL-caliber facility’ means a facility
16 for which the President, in consultation with the
17 State concerned, has prepared or is preparing a haz-
18 ardous ranking system scoring package or that satis-
19 fies such other definition as the Administrator may
20 promulgate by regulation. The term does not include
21 a facility for which the President—

22 “(A) has obtained a score under the haz-
23 ardous ranking system; and

1 “(B) based on that score, has made a de-
2 termination not to list on the National Prior-
3 ities List.

4 “(3) EXCEPTION.—Notwithstanding paragraph
5 (1), the President may, on a facility-by-facility basis
6 and pursuant to an agreement with the State con-
7 cerned, apply the limitations on authority provided
8 under subsections (c) and (d) to any facility listed
9 in subparagraph (D), (E), (F), (G)(ii), (G)(iii),
10 (G)(iv), (G)(v), (H), or (I) of paragraph (1) if the
11 President finds that such use would promote eco-
12 nomic development while still protecting human
13 health and the environment. In the case of a facility
14 listed in subparagraph (I), the President may use
15 the authority in the preceding sentence only if the
16 facility is not a facility described in subparagraph
17 (A), (B), (C), or (G)(i).

18 “(f) EPA ASSISTANCE TO STATES FOR STATE VOL-
19 UNTARY RESPONSE PROGRAMS.—The Administrator shall
20 assist States to establish and administer State voluntary
21 response programs that—

22 “(1) provide for voluntary response actions that
23 ensure adequate site assessment and protect human
24 health and the environment;

1 “(2) provide opportunities for technical assist-
2 ance with respect to voluntary response actions;

3 “(3) provide meaningful opportunities for public
4 participation on issues that affect the community,
5 which shall include prior notice and opportunity for
6 comment in the selection or significant modification
7 of response actions and which may include involve-
8 ment of State and local health officials during site
9 assessment;

10 “(4) provide streamlined procedures to ensure
11 expeditious voluntary response actions;

12 “(5) provide adequate oversight, enforcement
13 authorities, resources, and practices—

14 “(A) to ensure that voluntary response ac-
15 tions protect human health and the environ-
16 ment and are conducted in a timely manner in
17 accordance with a State-approved response ac-
18 tion plan or other instrument; and

19 “(B) to ensure completion of voluntary re-
20 sponse actions if the person conducting the vol-
21 untary response action fails or refuses to com-
22 plete the necessary voluntary response actions
23 that protect human health and the environ-
24 ment, including operation and maintenance or
25 long-term monitoring activities;

1 “(6) provide mechanisms for the approval of a
2 response action plan or other instrument; and

3 “(7) provide mechanisms for a certification or
4 similar documentation to the person who conducted
5 the response action indicating that the response is
6 complete.

7 “(g) FINANCIAL ASSISTANCE FOR DEVELOPMENT
8 AND ENHANCEMENT OF STATE VOLUNTARY RESPONSE
9 PROGRAMS AND REPORTING REQUIREMENT.—

10 “(1) PUBLIC RECORD.—To assist the Adminis-
11 trator in determining the needs of States for assist-
12 ance under this section, the Administrator shall en-
13 courage the States to maintain a public record of fa-
14 cilities, by name and location, that have been or are
15 planned to be addressed under a State voluntary re-
16 sponse program.

17 “(2) REPORTING REQUIREMENT.—Each State
18 receiving financial assistance under this section shall
19 submit to the Administrator a report at the end of
20 each calendar year on the progress of its voluntary
21 response program, which shall include the following
22 information with respect to that calendar year:

23 “(A) The number of sites, if any, under-
24 going voluntary cleanup, with the number of

1 sites in each stage of such cleanup set forth
2 separately.

3 “(B) The number of sites, if any, entering
4 voluntary cleanup.

5 “(C) The number of sites, if any, that re-
6 ceived a certification from the State indicating
7 that a response action is complete.

8 “(h) EPA REVIEW OF STATE PROGRAMS.—At any
9 time after the date of enactment of this section, a State
10 may submit, for review by the Administrator, documenta-
11 tion that the State considers appropriate to describe a
12 State voluntary response program, together with a certifi-
13 cation that the program is consistent with the elements
14 set forth in subsection (f), and, if such program is devel-
15 oped by administrative action, executive order, or regula-
16 tion, documentation of public comment and State response
17 to comment on the adequacy of the State voluntary re-
18 sponse program.

19 “(i) QUALIFICATION OF STATE PROGRAM.—

20 “(1) APPROVAL OR DISAPPROVAL.—(A) The
21 Administrator shall approve a State voluntary re-
22 sponse program submitted under subsection (h)
23 within 180 days after the Administrator receives
24 documentation and certification under subsection (h)
25 if the Administrator determines that the State’s sub-

1 mission is consistent with the elements set forth in
2 subsection (f). A program so approved by the Ad-
3 ministrator shall be considered a qualified program
4 under this section.

5 “(B) The Administrator shall publish in the
6 Federal Register the reasons for the approval or dis-
7 approval of any such program.

8 “(C) If the Administrator needs additional in-
9 formation, the 180-day time period referred to in
10 subparagraph (A) shall be extended until 30 days
11 after the Administrator is satisfied that enough ad-
12 ditional information has been obtained in order to
13 make a determination.

14 “(2) WITHDRAWAL OF QUALIFICATION.—When-
15 ever the Administrator determines that a State is
16 not administering and enforcing a qualified program
17 in accordance with subsection (f), the Administrator
18 shall notify the State in writing of such determina-
19 tion. If appropriate corrective action is not taken by
20 the State within 120 days after receipt of the notice,
21 the Administrator shall propose within 60 days
22 thereafter to withdraw approval of the program and
23 publish a notice of such proposed withdrawal in the
24 Federal Register. The Administrator shall not with-
25 draw approval of any such program unless the Ad-

1 administrator provides to the State in writing and pub-
2 lishes in the Federal Register the reasons for such
3 withdrawal. If the State subsequently completes the
4 necessary corrective measures as determined by the
5 Administrator, the Administrator shall reinstate the
6 program as a qualified program under this section.

7 “(j) EFFECT OF RESPONSE.—Performance of a vol-
8 untary response action pursuant to this section shall not
9 constitute an admission of liability under any Federal,
10 State, or local law or regulation or in any citizens suit
11 or other private action.

12 “(k) COMPLIANCE WITH NCP.—Solely for the pur-
13 pose of private cost recovery and contribution claims
14 under this Act, response actions conducted pursuant to
15 a qualified program shall be presumed to be consistent
16 with the National Contingency Plan.

17 “(l) ANNUAL REPORTING.—

18 “(1) REPORTS BY STATE.—Each State with a
19 qualified program under this section shall submit to
20 the Administrator a report at the end of each cal-
21 endar year describing whether the program con-
22 tinues to be consistent with the elements set forth
23 in subsection (f).

24 “(2) REPORT BY ADMINISTRATOR.—The Ad-
25 ministrator shall report, not later than two years

1 after the enactment of this section, and annually
2 thereafter, to the Congress on the status of State
3 voluntary response programs. The report shall in-
4 clude an analysis of whether qualified State vol-
5 untary response programs continue to be consistent
6 with the elements set forth in subsection (f).

7 “(m) EFFECT ON EXISTING STATE PROGRAMS.—
8 This section is not intended to impose any requirement
9 on any State voluntary response program, including a pro-
10 gram existing on or before the date of the enactment of
11 the Community Revitalization and Brownfield Cleanup
12 Act of 1999. A program shall not be considered to be a
13 qualified program under this section unless the program
14 is approved in accordance with this section.

15 “(n) EFFECT ON AGREEMENTS BETWEEN STATE
16 AND EPA.—This section is not intended to modify or oth-
17 erwise affect a memorandum of agreement, or a coopera-
18 tive agreement, under this Act between a State agency and
19 the Environmental Protection Agency in effect on or be-
20 fore the date of the enactment of the Community Revital-
21 ization and Brownfield Cleanup Act of 1999. Such an
22 agreement shall remain in effect, subject to the terms of
23 the agreement. This section is not intended to restrict or
24 limit the President’s discretionary authority to enter into
25 or modify an agreement with a State or other person relat-

1 ing to the President's implementation of authorities under
2 this Act, nor to modify or otherwise affect an existing
3 agreement between the President and any person relating
4 to the President's implementation of those authorities.

5 “(o) EFFECT ON OTHER LAWS.—Except as provided
6 in subsections (c) and (d), this section does not change,
7 modify, or otherwise affect the liability of any person or
8 the obligations imposed or authorities provided under any
9 law or regulation, including this Act, the Solid Waste Dis-
10 posal Act, the Federal Water Pollution and Control Act,
11 the Toxic Substances Control Act, and title XIV of the
12 Public Health Service Act (the Safe Drinking Water Act).

13 “(p) RELATIONSHIP TO INNOCENT LANDOWNER AND
14 PROSPECTIVE PURCHASER.—(1) The successful comple-
15 tion of a response action at a facility pursuant to a re-
16 sponse action plan or other instrument approved under a
17 qualified program under this section shall be evidence to
18 be considered for purposes of section 107(o)(3)(B) and
19 section 101(39)(D).

20 “(2) Nothing in this section shall be construed to re-
21 quire any person to participate in a qualified voluntary
22 response program under this section or in any other vol-
23 untary response program in order to qualify as an inno-
24 cent landowner or bona fide prospective purchaser for pur-
25 poses of subsections (o) and (p) of section 107.”.

1 **TITLE IV—LIABILITY RELIEF**

2 **SEC. 401. RATIFICATION OF MUNICIPAL SOLID WASTE SET-**
3 **TLEMENT POLICY.**

4 (a) CONTRIBUTION OF MUNICIPAL SOLID WASTE
5 AND SEWAGE SLUDGE.—Section 122(g)(1) of the Com-
6 prehensive Environmental Response, Compensation, and
7 Liability Act of 1980 (42 U.S.C. 9622(g)(1)) is
8 amended—

9 (1) by striking “either of the following subpara-
10 graph (A) or (B)” and inserting “1 or more of the
11 following subparagraphs”; and

12 (2) by inserting after subparagraph (B) the fol-
13 lowing:

14 “(C) CONTRIBUTION OF MUNICIPAL SOLID
15 WASTE AND SEWAGE SLUDGE.—

16 “(i) IN GENERAL.—The potentially re-
17 sponsible party’s liability for response costs
18 is based on paragraph (3) or (4) of section
19 107(a), and the person can demonstrate
20 that it arranged for disposal or treatment
21 of, arranged with a transporter for trans-
22 port for disposal or treatment of, or ac-
23 cepted for transport for disposal or treat-
24 ment, municipal solid waste or sewage

1 sludge at a facility listed on the National
2 Priorities List.

3 “(ii) SETTLEMENT AMOUNT.—To the
4 extent that liability is based on municipal
5 solid waste or sewage sludge, the President
6 shall offer a settlement to such a party
7 under this subparagraph on the basis of a
8 payment of \$5.30 per ton of municipal
9 solid waste or sewage sludge that the
10 President estimates is attributable to such
11 party. Where the party has been forth-
12 coming with requested information, but the
13 information is nonetheless incomplete, the
14 President shall estimate the party’s quan-
15 tity of municipal solid waste or sewage
16 sludge by incorporating reasonable as-
17 sumptions based on relevant information,
18 such as census data and national per cap-
19 ita solid waste generation information.
20 Such a settlement shall pertain only to the
21 party’s liability with respect to municipal
22 solid waste or sewage sludge under para-
23 graph (3) or (4) of section 107.

24 “(iii) CONDITIONS.—In order for a
25 municipality to be eligible for the settle-

1 ment described in this subparagraph (C),
2 the acts or omissions giving rise to liability
3 must have occurred before a date 2 years
4 after the date of enactment of this sub-
5 paragraph, or the municipality asserting
6 the limitation must institute or participate
7 in a qualified household hazardous waste
8 disposal program before a date 2 years
9 after the date of enactment of this sub-
10 paragraph.

11 “(iv) EXCLUSION OF CERTAIN FACILI-
12 TIES.—A potentially responsible party de-
13 scribed in clause (i) shall not be eligible for
14 a settlement described in this subpara-
15 graph if the facility at which the disposal
16 or treatment occurred contains only munic-
17 ipal solid waste or sewage sludge.

18 “(v) EXCEPTION FOR CERTAIN SEW-
19 AGE SLUDGE.—The President may decline
20 to offer a settlement under this subsection
21 to a person that arranged for disposal or
22 treatment of, arranged with a transporter
23 for transport for disposal or treatment of,
24 or accepted for transport for disposal or
25 treatment, sewage sludge, if the President

1 determines that the sewage sludge contrib-
2 uted or could contribute significantly to
3 the cost of response.

4 “(vi) ADJUSTMENT FOR INFLATION.—
5 The settlement rate per ton of municipal
6 solid waste or sewage sludge under this
7 subparagraph (C) shall be adjusted annu-
8 ally for inflation. Such adjustments shall
9 take effect on July 1 of each year after the
10 enactment of this subparagraph. The infla-
11 tion adjustment shall be determined by in-
12 creasing the settlement rate per ton of mu-
13 nicipal solid waste or sewage sludge under
14 this subparagraph (C) by the cost-of-living
15 adjustment. The cost-of-living adjustment
16 shall be the percentage difference by which
17 the Consumer Price Index for the month
18 of the June preceding a settlement exceeds
19 the Consumer Price Index for the imme-
20 diate prior month of June.

21 “(vii) OTHER MATERIALS.—Notwith-
22 standing clause (i), a potentially respon-
23 sible party that arranged for disposal or
24 treatment of, arranged with a transporter
25 for transport for disposal or treatment of,

1 or accepted for transport for disposal or
2 treatment, municipal solid waste or sewage
3 sludge and other materials containing haz-
4 ardous substances shall be eligible for the
5 per-ton settlement rate described in this
6 subparagraph as to the municipal solid
7 waste or sewage sludge only if the poten-
8 tially responsible party demonstrates to the
9 President's satisfaction the quantity of the
10 municipal solid waste and sewage sludge
11 contributed by such party and the quantity
12 and composition of the other materials
13 containing hazardous substances contrib-
14 uted by such party. Where such party
15 demonstrates to the President's satisfac-
16 tion that the material other than municipal
17 solid waste or sewage sludge contributed
18 by such party is eligible for the de micro-
19 mis exemption under section 107(u) or a
20 de minimis settlement under subparagraph
21 (A), such party shall be eligible for the
22 per-ton settlement rate as to its municipal
23 solid waste or municipal sewage sludge in
24 an expedited settlement under this para-
25 graph. In other cases, the President shall

1 offer to resolve the party's liability with re-
2 spect to the municipal solid waste or sew-
3 age sludge at the per-ton settlement rate
4 described in this paragraph at such time as
5 the party also agrees to a settlement with
6 respect to other materials containing haz-
7 ardous substances on terms and conditions
8 acceptable to the President.

9 “(viii) MUNICIPAL OWNERS AND OP-
10 ERATORS.—Where a municipality is eligible
11 for the per-ton settlement rate under this
12 subparagraph, and is also eligible for a set-
13 tlement under section 107(s) with respect
14 to the same facility, the President shall
15 offer a settlement to such municipality for
16 an amount equal to the settlement amount
17 under clause (ii) with respect to its con-
18 tribution of municipal solid waste or sew-
19 age sludge, plus the amount provided in
20 section 107(s) as to the liability of the mu-
21 nicipality under paragraph (1) or (2) of
22 section 107(a). Notwithstanding any other
23 requirement in this section, such a settle-
24 ment offer shall be made at such time as
25 the President determines is appropriate.

1 “(ix) EXPIRATION OF OFFER.—The
2 President’s obligation to offer a settlement
3 at the rate provided under this subpara-
4 graph shall expire if the party to which the
5 offer has been made fails to accept such an
6 offer within a reasonable time period.”.

7 (b) MUNICIPAL OWNERS AND OPERATORS.—Section
8 107 of such Act (42 U.S.C. 9607) is further amended by
9 adding at the end the following new subsection:

10 “(s) MUNICIPAL OWNERS AND OPERATORS.—

11 “(1) IN GENERAL.—A municipality that is lia-
12 ble for response costs under paragraph (1) or (2) of
13 subsection (a) on the basis of ownership or operation
14 of a municipal landfill that is listed on the National
15 Priorities List on or before September 1, 1999 (as
16 identified by the President), shall be eligible for a
17 settlement under this subsection.

18 “(2) SETTLEMENT AMOUNT.—(A) The Presi-
19 dent shall offer a settlement to a party with respect
20 to such liability on the basis of a payment or other
21 obligation equivalent in value to no more than 20
22 percent of the total response costs in connection with
23 the facility. The President may increase this per-
24 centage to no more than 35 percent of the total re-

1 sponse costs in connection with the facility if the
2 President determines—

3 “(i) the municipality exacerbated environ-
4 mental contamination or exposure with respect
5 to the facility; or

6 “(ii) the municipality, during the period of
7 ownership or operation of the facility, received
8 operating revenues substantially in excess of the
9 sum of the waste system operating costs plus
10 20 percent of total estimated response costs in
11 connection with the facility.

12 “(B) Such a settlement shall pertain to only the
13 party’s liability under paragraph (1) or (2) of sub-
14 section (a).

15 “(3) PERFORMANCE OF RESPONSE ACTIONS.—
16 Subject to the limitations of paragraph (2), the
17 President may require, as a condition of a settle-
18 ment with a municipality under this subsection, that
19 the municipality perform, or participate in the per-
20 formance of, the response actions at the site.

21 “(4) JOINT OWNERSHIP OR OPERATION.—A
22 combination of 2 or more municipalities that jointly
23 owned or operated the facility at the same time or
24 during continuous operations under municipal con-
25 trol, shall be considered a single owner/operator for

1 the purpose of calculating a settlement offer pursu-
2 ant to this subsection.

3 “(5) WAIVER OF CLAIMS.—The President may
4 require, as a condition of a settlement under this
5 subsection, that the municipality waive some or all
6 of the claims or causes of action that such munici-
7 pality may have against other potentially responsible
8 parties relating to the site, including claims for con-
9 tribution under section 113.

10 “(6) CONDITIONS.—In order for a municipality
11 to be eligible for the limited liability described in this
12 subsection, the acts or omissions giving rise to liabil-
13 ity must have occurred before a date 2 years after
14 the date of enactment of this subsection, or the mu-
15 nicipality asserting the limitation must institute or
16 participate in a qualified household hazardous waste
17 disposal program before a date 2 years after the
18 date of enactment of this subsection.

19 “(7) EXCEPTIONS.—The President may decline
20 to offer a settlement under this subsection where the
21 President determines—

22 “(A) there is only municipal solid waste or
23 sewage sludge at the facility;

24 “(B) all other identified potentially respon-
25 sible parties are insolvent, defunct, or eligible

1 for a settlement under this subsection or under
2 section 122(g);

3 “(C) the municipality has failed to comply
4 fully and completely with information requests,
5 administrative subpoenas, or discovery requests
6 issued by the United States; or

7 “(D) the municipality has impeded or is
8 impeding, through action or inaction, the per-
9 formance of a response action or a natural re-
10 source restoration with respect to the facility.

11 “(8) EXPIRATION OF OFFER.—The President’s
12 obligation to offer a settlement under this section
13 shall expire if the municipality to which the offer is
14 made fails to accept such an offer within a reason-
15 able time period.”.

16 **SEC. 402. SMALL BUSINESS AND HOMEOWNER MUNICIPAL**
17 **SOLID WASTE EXEMPTION.**

18 (a) MUNICIPAL SOLID WASTE EXEMPTION.—Section
19 107 of such Act (42 U.S.C. 9607) is further amended by
20 adding at the end the following new subsection:

21 “(t) MUNICIPAL SOLID WASTE EXEMPTION.—

22 “(1) IN GENERAL.—Notwithstanding para-
23 graphs (1) through (4) of subsection (a), and except
24 as provided in paragraph (2), a person shall not be
25 liable under this Act to the United States or any

1 other person (including liability for contribution) for
2 response costs or damages incurred with respect to
3 a facility to the extent that—

4 “(A) liability is based on paragraph (3) or
5 (4) of subsection (a);

6 “(B) liability is based on an arrangement
7 for disposal or treatment of, an arrangement
8 with a transporter for transport for disposal or
9 treatment of, or an acceptance for transport for
10 disposal or treatment at a facility of, municipal
11 solid waste; and

12 “(C) the person is—

13 “(i) an owner, operator, or lessee of
14 residential property from which all of the
15 person’s municipal solid waste was gen-
16 erated with respect to the facility;

17 “(ii) a business entity (including any
18 parent, subsidiary, or other affiliate of the
19 entity) that, during the taxable year pre-
20 ceding the date of transmittal of written
21 notification that the business is potentially
22 liable, employed not more than 100 indi-
23 viduals, and from which was generated all
24 of the entity’s municipal solid waste with
25 respect to the facility; or

1 “(iii) a small nonprofit organization
2 that, during the taxable year preceding the
3 date of transmittal of written notification
4 that the organization is potentially liable,
5 employed not more than 100 individuals, if
6 the particular chapter, office, or depart-
7 ment employing fewer than 100 individuals
8 was the location from which was generated
9 all of the municipal solid waste attributable
10 to the organization with respect to the fa-
11 cility.

12 For purposes of this subsection, the term ‘affiliate’
13 has the meaning of that term provided in the defini-
14 tion of ‘small business concern’ in regulations pro-
15 mulgated by the Small Business Administration in
16 accordance with the Small Business Act (15 U.S.C.
17 631 et seq.).

18 “(2) EXCEPTION.—Paragraph (1) shall not
19 apply in a case in which the President determines
20 that the person has failed to comply with any re-
21 quest for information or administrative subpoena
22 issued by the President under this Act or has im-
23 peded or is impeding the performance of a response
24 action or natural resource restoration with respect to
25 the facility.”.

1 (b) DEFINITIONS.—Section 101 of such Act (42
2 U.S.C. 9601) is further amended by adding at the end
3 the following new paragraphs:

4 “(40) MUNICIPAL SOLID WASTE.—(A) The
5 term ‘municipal solid waste’ means waste materials
6 generated by households, including single and multi-
7 family residences. The term also includes waste ma-
8 terials generated by commercial, institutional, or in-
9 dustrial sources, to the extent such wastes—

10 “(i) are essentially the same as waste nor-
11 mally generated by households; or

12 “(ii) are collected and disposed of with
13 other municipal solid waste or sewage sludge as
14 part of normal municipal solid waste collection
15 services, and, with respect to each source from
16 which the waste materials were collected, quali-
17 fies for the de micromis exemption set forth in
18 section 107(u).

19 “(B) Examples of municipal solid waste under
20 subparagraph (A) include food and yard waste,
21 paper, clothing, appliances, consumer product pack-
22 aging, disposable diapers, office supplies, cosmetics,
23 glass and metal food containers, elementary or sec-
24 ondary school science laboratory waste, and house-
25 hold hazardous waste. The term does not include

1 combustion ash generated by resource recovery fa-
2 cilities or municipal incinerators, or waste from
3 manufacturing or processing (including pollution
4 control) operations not essentially the same as waste
5 normally generated by households.

6 “(41) MUNICIPALITY.—The term ‘municipality’
7 means a political subdivision of a State, including a
8 city, county, village, town, township, borough, par-
9 ish, school, school district, sanitation district, water
10 district, or other public entity performing local gov-
11 ernmental functions. The term also includes a nat-
12 ural person acting in the capacity of an official, em-
13 ployee, or agent of any entity referred to in the pre-
14 ceding sentence in the performance of governmental
15 functions.

16 “(42) OWNER, OPERATOR, OR LESSEE OF RESI-
17 DENTIAL PROPERTY.—The term ‘owner, operator, or
18 lessee of residential property’ means a person who
19 owns, operates, manages, or leases residential prop-
20 erty and who uses or allows the use of the residen-
21 tial property exclusively for residential purposes. The
22 term ‘residential property’ means single or multi-
23 family residences, including accessory land, build-
24 ings, or improvements incidental to such dwellings,
25 that are exclusively for residential use.

1 “(43) QUALIFIED HOUSEHOLD HAZARDOUS
2 WASTE COLLECTION PROGRAM.—The term ‘qualified
3 household hazardous waste collection program’
4 means a program established by an entity of the
5 Federal Government, a State, a municipality, or an
6 Indian tribe that provides, at a minimum, for annual
7 collection of household hazardous wastes at acces-
8 sible, well-publicized collection points.

9 “(44) SMALL NONPROFIT ORGANIZATION.—The
10 term ‘small nonprofit organization’ means any orga-
11 nization that, at the time of disposal, did not dis-
12 tribute any part of its income or profit to its mem-
13 bers, directors, or officers, employed no more than
14 40 paid individuals at the chapter, office, or depart-
15 ment, and was an organization described in section
16 501(c) of the Internal Revenue Code of 1986 and
17 exempt from taxation under section 501(a) of such
18 Code.

19 “(45) SEWAGE SLUDGE.—The term ‘sewage
20 sludge’ means solid, semisolid, or liquid residue re-
21 moved during the treatment of municipal waste
22 water, domestic sewage, or other waste water at or
23 by publicly owned or federally owned treatment
24 works.”.

1 **SEC. 403. DE MICROMIS EXEMPTION.**

2 Section 107 of such Act (42 U.S.C. 9607) is further
3 amended by adding at the end the following new sub-
4 section:

5 “(u) DE MICROMIS EXEMPTION.—

6 “(1) IN GENERAL.—Notwithstanding para-
7 graphs (1) through (4) of subsection (a), a person
8 shall not be liable under this Act if liability is based
9 solely on paragraph (3) or (4) of subsection (a), and
10 the person can demonstrate that the total amount of
11 the material containing hazardous substances that
12 the person arranged for disposal or treatment of, ar-
13 ranged with a transporter for transport for disposal
14 or treatment of, or accepted for transport for dis-
15 posal or treatment, at the facility was less than 110
16 gallons of liquid materials or less than 200 pounds
17 of solid materials (or such greater or lesser amounts
18 as the Administrator may determine by regulation).

19 “(2) EXCEPTIONS.—The exemption pursuant to
20 paragraph (1) shall not apply in a case in which—

21 “(A) all or part of the disposal or treat-
22 ment concerned occurred after September 1,
23 1999; or

24 “(B) the President, in his sole discretion,
25 determines that—

1 “(i) the materials containing haz-
2 ardous substances referred to in paragraph
3 (1) have contributed significantly or could
4 contribute significantly, either individually
5 or in the aggregate, to the cost of the re-
6 sponse action or natural resource restora-
7 tion with respect to the facility; or

8 “(ii) the person has failed to comply
9 fully and completely with information re-
10 quests, administrative subpoenas, or dis-
11 covery requests issued by the President or
12 has impeded or is impeding, through action
13 or inaction, the performance of a response
14 action or natural resource restoration with
15 respect to the facility.”.

16 **SEC. 404. ABILITY TO PAY.**

17 Section 122(g)(1) of the Comprehensive Environ-
18 mental Response, Compensation, and Liability Act of
19 1980 (42 U.S.C. 9622(g)(1)), as amended by section 401
20 of this Act, is further amended by adding at the end the
21 following:

22 “(D) ABILITY TO PAY.—

23 “(i) IN GENERAL.—The potentially re-
24 sponsible party is a natural person, a small
25 business, or a municipality and dem-

1 onstrates to the United States an inability
2 or a limited ability to pay response costs.

3 “(ii) SMALL BUSINESS.—For purposes
4 of this subparagraph, each of the following
5 provisions apply:

6 “(I) DETERMINATION.—The
7 small business shall demonstrate the
8 amount of its ability to pay response
9 costs. If the small business employs
10 fewer than 20 employees and has
11 gross income revenues of less than
12 \$1,800,000, the President shall per-
13 form any analysis that the President
14 determines may assist in dem-
15 onstrating the impact of a settlement
16 upon the small business’s ability to
17 maintain its basic operations. The
18 President, in his discretion, may per-
19 form such analysis for any other party
20 or require such other party to perform
21 the analysis.

22 “(II) ALTERNATIVE PAYMENT
23 METHODS.—If the President deter-
24 mines that a small business is unable
25 to pay its total settlement amount im-

1 mediately, the President shall consider
2 such alternative payment methods as
3 may be necessary or appropriate. The
4 methods to be considered may include
5 installment payments, to be paid dur-
6 ing a period not to exceed 10 years,
7 and the provision of in-kind services.

8 “(iii) MUNICIPALITIES.—For purposes
9 of this subparagraph, each of the following
10 provisions apply:

11 “(I) CONSIDERATIONS.—In the
12 case of a municipality, the President
13 shall consider, to the extent that in-
14 formation is provided by the
15 municipality—

16 “(aa) the general obligation
17 bond rating and information
18 about the most recent bond issue
19 for which the rating was pre-
20 pared;

21 “(bb) the amount of total
22 available funds (other than dedi-
23 cated funds or State assistance
24 payments for remediation of inac-
25 tive hazardous waste sites);

1 “(cc) the amount of total
2 operating revenues (other than
3 obligated or encumbered reve-
4 nues);

5 “(dd) the amount of total
6 expenses;

7 “(ee) the amounts of total
8 debt and debt service;

9 “(ff) per capita income and
10 cost of living;

11 “(gg) real property values;

12 “(hh) unemployment infor-
13 mation; and

14 “(ii) population information
15 of the municipality.

16 “(II) EVALUATION OF IMPACT.—

17 A municipality may also submit for
18 consideration by the President an
19 evaluation of the potential impact of
20 the settlement on the provision of es-
21 sential municipal services and the fea-
22 sibility of making delayed payments or
23 payments over time. If a municipality
24 asserts that it has additional environ-
25 mental obligations besides its poten-

1 tial liability under this Act, the mu-
2 nicipality may create a list of the obli-
3 gations, including an estimate of the
4 costs of complying with such obliga-
5 tions.

6 “(III) RISK OF DEFAULT OR VIO-
7 LATION.—A municipality may estab-
8 lish an inability to pay for purposes of
9 this subparagraph through an affirm-
10 ative showing that such payment of
11 its liability under this Act would—

12 “(aa) create a substantial
13 demonstrable risk that the mu-
14 nicipality would default on exist-
15 ing debt obligations (existing as
16 of the time of the showing), be
17 forced into bankruptcy, be forced
18 to dissolve, or be forced to make
19 budgetary cutbacks that would
20 substantially reduce current lev-
21 els (as of the time of the show-
22 ing) of protection of public health
23 and safety; or

24 “(bb) necessitate a violation
25 of legal requirements or limita-

1 tions of general applicability con-
2 cerning the assumption and
3 maintenance of fiscal municipal
4 obligations.

5 “(IV) ADDITIONAL FACTOR REL-
6 EVANT TO SETTLEMENTS WITH MU-
7 NICIPALITIES.—In any settlement
8 with a municipality pursuant to this
9 title, the President may consider the
10 fair-market value of any in-kind serv-
11 ices that the party may provide to
12 support the response action at the fa-
13 cility in determining an appropriate
14 settlement amount.

15 “(iv) EFFECT ON AUTHORITY.—This
16 subparagraph shall not be construed to
17 limit or affect the President’s authority to
18 evaluate any person’s ability to pay or to
19 enter into settlements with any person
20 based on that person’s inability to pay.

21 “(E) ADDITIONAL CONDITIONS FOR EXPE-
22 DITED SETTLEMENTS.—

23 “(i) WAIVER OF CLAIMS.—The Presi-
24 dent may require, as a condition of a set-
25 tlement under this paragraph (1), that the

1 potentially responsible party waive some or
2 all of the claims or causes of action that
3 such party may have against other poten-
4 tially responsible parties relating to the
5 site, including claims for contribution
6 under section 113.

7 “(ii) EXCEPTION.—The President
8 may decline to offer a settlement under
9 this paragraph (1) where the President
10 determines—

11 “(I) the person has failed to com-
12 ply fully and completely with informa-
13 tion requests, administrative sub-
14 poenas, or discovery requests issued
15 by the United States; or

16 “(II) the person has impeded or
17 is impeding, through action or inac-
18 tion, the performance of a response
19 action or natural resource restoration
20 with respect to the facility.

21 “(iii) BASIS OF DETERMINATION.—If
22 the President determines that a party is
23 not eligible for a settlement pursuant to
24 this subsection, the basis for that deter-
25 mination shall be explained in writing to

1 any person who requests such a settlement.

2 Such a determination shall not be subject
3 to judicial review.”.

4 **SEC. 405. RECYCLING TRANSACTIONS.**

5 Title I of the Comprehensive Environmental Re-
6 sponse, Compensation, and Liability Act of 1980 (42
7 U.S.C. 9601 et seq.) is amended by adding at the end
8 the following new section:

9 **“SEC. 128. RECYCLING TRANSACTIONS.**

10 “(a) LIABILITY CLARIFICATION.—(1) As provided in
11 subsections (b), (c), (d), and (e), a person who arranged
12 for recycling of recyclable material shall not be liable
13 under section 107(a)(3) or 107(a)(4) with respect to the
14 material.

15 “(2) A determination of whether or not any person
16 shall be liable under section 107(a)(3) or (4) for any mate-
17 rial that is not a recyclable material as that term is used
18 in subsection (b), (c), (d), (e), or (f) of this section shall
19 be made without regard to subsection (b), (c), (d), (e),
20 or (f) of this section.

21 “(b) RECYCLABLE MATERIAL DEFINED.—For pur-
22 poses of this section, the term ‘recyclable material’ means
23 scrap paper, scrap plastic, scrap glass, scrap textiles,
24 scrap rubber (other than whole tires not sent for retread-
25 ing), scrap metal, or spent lead-acid, spent nickel-cad-

1 mium, and other spent batteries, as well as minor amounts
2 of material incident to or adhering to the scrap material
3 as a result of its normal and customary use prior to be-
4 coming scrap; except that such term shall not include ship-
5 ping containers of a capacity from 30 liters to 3,000 liters,
6 whether intact or not, having any hazardous substance
7 (but not metal bits and pieces or hazardous substance that
8 form an integral part of the container) contained in or
9 adhering thereto.

10 “(c) TRANSACTIONS INVOLVING SCRAP PAPER,
11 PLASTIC, GLASS, TEXTILES, OR RUBBER.—Transactions
12 involving scrap paper, scrap plastic, scrap glass, scrap tex-
13 tiles, or scrap rubber (other than whole tires not sent for
14 retreading) shall be deemed to be arranging for recycling
15 if the person who arranged for the transaction (by selling
16 recyclable material or otherwise arranging for the recy-
17 cling of recyclable material) can demonstrate by a prepon-
18 derance of the evidence that all of the following criteria
19 were met at the time of the transaction:

20 “(1) The recyclable material met a commercial
21 specification grade.

22 “(2) A market existed for the recyclable mate-
23 rial.

1 “(3) A substantial portion of the recyclable ma-
2 terial was made available for use as feedstock for the
3 manufacture of a new saleable product.

4 “(4) The recyclable material could have been a
5 replacement or substitute for a virgin raw material,
6 or the product to be made from the recyclable mate-
7 rial could have been a replacement or substitute for
8 a product made, in whole or in part, from a virgin
9 raw material.

10 “(5) For transactions occurring 90 days or
11 more after the date of enactment of this section, the
12 person exercised reasonable care to determine that
13 the facility where the recyclable material was han-
14 dled, processed, reclaimed, or otherwise managed by
15 another person (hereinafter in this section referred
16 to as a ‘consuming facility’) was in compliance with
17 substantive (not procedural or administrative) provi-
18 sions of any Federal, State, or local environmental
19 law or regulation, or compliance order or decree
20 issued pursuant thereto, applicable to the handling,
21 processing, reclamation, storage, or other manage-
22 ment activities associated with recyclable material.

23 “(6) For purposes of this subsection, ‘reason-
24 able care’ shall be determined using criteria that in-
25 clude (but are not limited to)—

1 “(A) the price paid in the recycling trans-
2 action;

3 “(B) the ability of the person to detect the
4 nature of the consuming facility’s operations
5 concerning its handling, processing, reclama-
6 tion, or other management activities associated
7 with recyclable material; and

8 “(C) the result of inquiries made to the ap-
9 propriate Federal, State, or local environmental
10 agency (or agencies) regarding the consuming
11 facility’s past and current compliance with sub-
12 stantive (not procedural or administrative) pro-
13 visions of any Federal, State, or local environ-
14 mental law or regulation, or compliance order
15 or decree issued pursuant thereto, applicable to
16 the handling, processing, reclamation, storage,
17 or other management activities associated with
18 the recyclable material. For the purposes of this
19 paragraph, a requirement to obtain a permit
20 applicable to the handling, processing, reclama-
21 tion, or other management activity associated
22 with the recyclable materials shall be deemed to
23 be a substantive provision.

24 “(d) TRANSACTIONS INVOLVING SCRAP METAL.—

1 “(1) Transactions involving scrap metal shall be
2 deemed to be arranging for recycling if the person
3 who arranged for the transaction (by selling recycla-
4 ble material or otherwise arranging for the recycling
5 of recyclable material) can demonstrate by a prepon-
6 derance of the evidence that at the time of the
7 transaction—

8 “(A) the person met the criteria set forth
9 in subsection (c) with respect to the scrap
10 metal;

11 “(B) the person was in compliance with
12 any applicable regulations or standards regard-
13 ing the storage, transport, management, or
14 other activities associated with the recycling of
15 scrap metal that the Administrator promulgates
16 under the Solid Waste Disposal Act subsequent
17 to the enactment of this section and with re-
18 gard to transactions occurring after the effec-
19 tive date of such regulations or standards; and

20 “(C) the person did not melt the scrap
21 metal prior to the transaction.

22 “(2) For purposes of paragraph (1)(C), melting
23 of scrap metal does not include the thermal separa-
24 tion of 2 or more materials due to differences in
25 their melting points (referred to as ‘sweating’).

1 “(3) For purposes of this subsection, the term
2 ‘scrap metal’ means bits and pieces of metal parts
3 (e.g., bars, turnings, rods, sheets, wire) or metal
4 pieces that may be combined together with bolts or
5 soldering (e.g., radiators, scrap automobiles, railroad
6 box cars), which when worn or superfluous can be
7 recycled, except for scrap metals that the Adminis-
8 trator excludes from this definition by regulation.

9 “(e) TRANSACTIONS INVOLVING BATTERIES.—
10 Transactions involving spent lead-acid batteries, spent
11 nickel-cadmium batteries, or other spent batteries shall be
12 deemed to be arranging for recycling if the person who
13 arranged for the transaction (by selling recyclable material
14 or otherwise arranging for the recycling of recyclable ma-
15 terial) can demonstrate by a preponderance of the evi-
16 dence that at the time of the transaction—

17 “(1) the person met the criteria set forth in
18 subsection (c) with respect to the spent lead-acid
19 batteries, spent nickel-cadmium batteries, or other
20 spent batteries, but the person did not recover the
21 valuable components of such batteries; and

22 “(2)(A) with respect to transactions involving
23 lead-acid batteries, the person was in compliance
24 with applicable Federal environmental regulations or
25 standards, and any amendments thereto, regarding

1 the storage, transport, management, or other activi-
2 ties associated with the recycling of spent lead-acid
3 batteries;

4 “(B) with respect to transactions involving
5 nickel-cadmium batteries, Federal environmental
6 regulations or standards are in effect regarding the
7 storage, transport, management, or other activities
8 associated with the recycling of spent nickel-cad-
9 mium batteries, and the person was in compliance
10 with applicable regulations or standards or any
11 amendments thereto; or

12 “(C) with respect to transactions involving
13 other spent batteries, Federal environmental regula-
14 tions or standards are in effect regarding the stor-
15 age, transport, management, or other activities asso-
16 ciated with the recycling of such batteries, and the
17 person was in compliance with applicable regulations
18 or standards or any amendments thereto.

19 “(f) EXCLUSIONS.—

20 “(1) The exemptions set forth in subsections
21 (c), (d), and (e) shall not apply if—

22 “(A) the person had an objectively reason-
23 able basis to believe at the time of the recycling
24 transaction—

1 “(i) that the recyclable material would
2 not be recycled;

3 “(ii) that the recyclable material
4 would be burned as fuel, or for energy re-
5 covery or incineration; or

6 “(iii) for transactions occurring before
7 90 days after the date of the enactment of
8 this section, that the consuming facility
9 was not in compliance with a substantive
10 (not procedural or administrative) provi-
11 sion of any Federal, State, or local envi-
12 ronmental law or regulation, or compliance
13 order or decree issued pursuant thereto,
14 applicable to the handling, processing, rec-
15 lamation, or other management activities
16 associated with the recyclable material;

17 “(B) the person had reason to believe that
18 hazardous substances had been added to the re-
19 cyclable material for purposes other than proc-
20 essing for recycling;

21 “(C) the person failed to exercise reason-
22 able care with respect to the management and
23 handling of the recyclable material (including
24 adhering to customary industry practices cur-
25 rent at the time of the recycling transaction de-

1 signed to minimize, through source control, con-
2 tamination of the recyclable material by haz-
3 ardous substances); or

4 “(D) with respect to any item of a recycla-
5 ble material, the item contained polychlorinated
6 biphenyls at a concentration in excess of 50
7 parts per million or any new standard promul-
8 gated pursuant to applicable Federal laws.

9 “(2) For purposes of this subsection, an objec-
10 tively reasonable basis for belief shall be determined
11 using criteria that include (but are not limited to)
12 the size of the person’s business, customary industry
13 practices (including customary industry practices
14 current at the time of the recycling transaction de-
15 signed to minimize, through source control, contami-
16 nation of the recyclable material by hazardous sub-
17 stances), the price paid in the recycling transaction,
18 and the ability of the person to detect the nature of
19 the consuming facility’s operations concerning its
20 handling, processing, reclamation, or other manage-
21 ment activities associated with the recyclable mate-
22 rial.

23 “(3) For purposes of this subsection, a require-
24 ment to obtain a permit applicable to the handling,
25 processing, reclamation, or other management activi-

1 ties associated with recyclable material shall be
2 deemed to be a substantive provision.

3 “(g) EFFECT ON OTHER LIABILITY.—Nothing in
4 this section shall be deemed to affect the liability of a per-
5 son under paragraph (1) or (2) of section 107(a). Nothing
6 in this section shall be deemed to affect the liability of
7 a person under paragraph (3) or (4) of section 107(a) with
8 respect to materials that are not recyclable materials as
9 defined in subsection (b) of this section.

10 “(h) REGULATIONS.—The Administrator has the au-
11 thority, under section 115, to promulgate additional regu-
12 lations concerning this section.

13 “(i) EFFECT ON PENDING OR CONCLUDED AC-
14 TIONS.—The exemptions provided in this section shall not
15 affect any concluded judicial or administrative action or
16 any pending judicial action initiated by the United States
17 prior to enactment of this section.

18 “(j) LIABILITY FOR ATTORNEY’S FEES FOR CERTAIN
19 ACTIONS.—Any person who commences an action in con-
20 tribution against a person who is not liable by operation
21 of this section shall be liable to that person for all reason-
22 able costs of defending that action, including all reason-
23 able attorney’s and expert witness fees.

24 “(k) RELATIONSHIP TO LIABILITY UNDER OTHER
25 LAWS.—Nothing in this section shall affect—

1 “(1) liability under any other Federal, State, or
2 local statute or regulation promulgated pursuant to
3 any such statute, including any requirements pro-
4 mulgated by the Administrator under the Solid
5 Waste Disposal Act; or

6 “(2) the ability of the Administrator to promul-
7 gate regulations under any other statute, including
8 the Solid Waste Disposal Act.

9 “(l) LIMITATION ON STATUTORY CONSTRUCTION.—
10 Nothing in this section shall be construed to—

11 “(1) affect any defenses or liabilities of any per-
12 son to whom subsection (a)(1) does not apply; or

13 “(2) create any presumption of liability against
14 any person to whom subsection (a)(1) does not
15 apply.”.

16 **TITLE V—STUDY**

17 **SEC. 501. STUDY OF FUTURE FUNDING NEEDS.**

18 (a) STUDY OF 10-YEAR FUNDING NEEDS FOR IM-
19 PLEMENTING CERCLA.—The Administrator of the Envi-
20 ronmental Protection Agency shall arrange for the con-
21 ducting of an independent analysis of the projected 10-
22 year costs to the Environmental Protection Agency of im-
23 plementing the programs authorized by the Comprehen-
24 sive Environmental Response, Compensation, and Liabil-
25 ity Act of 1980. Such analysis shall include estimates of

1 annual and cumulative costs over the next 10 years associ-
2 ated with administering such Act by the Environmental
3 Protection Agency, shall identify sources of uncertainty in
4 the estimates, and shall be completed by May 1, 2000.

5 (b) BREAKDOWN OF COSTS.—The study referred to
6 in subsection (a) shall include estimates of the following:

7 (1) Costs for completion of all non-Federal fa-
8 cilities currently on the National Priorities List.

9 (2) Costs for completion of all Federal facilities
10 currently on the National Priorities List.

11 (3) Costs associated with those non-Federal
12 sites which the Administrator of the Environmental
13 Protection Agency expects to be added to the Na-
14 tional Priorities List over the next 10 years.

15 (4) Costs associated with those Federal facili-
16 ties which the Administrator expects to be added to
17 the National Priorities List over the next 10 years.

18 (5) Costs for operations and maintenance at fa-
19 cilities currently on, or anticipated to be added over
20 the next 10 years to, the National Priorities List.

21 (6) Costs associated with reviews of remedies
22 under section 121(c) of the Comprehensive Environ-
23 mental Response, Compensation, and Liability Act
24 of 1980, and any follow-up activities.

25 (7) Costs for removal activities.

1 The study shall not include costs associated with imple-
2 menting title I of this Act. With respect to the costs de-
3 scribed in paragraph (3), the study shall take into account
4 current and anticipated funding capabilities of State pro-
5 grams and the number and type of facilities the States
6 consider likely to be listed on the National Priorities List.

7 (c) ORGANIZATIONS TO CONDUCT STUDY.—The
8 study under subsection (a) shall be conducted by a neu-
9 tral, nongovernmental organization with expertise in the
10 Comprehensive Environmental Response, Compensation,
11 and Liability Act of 1980, in coordination with the Admin-
12 istrator of the Environmental Protection Agency, the
13 States, and the Comptroller General. In conducting the
14 study, the nongovernmental organization shall collect rel-
15 evant information from experts and other interested per-
16 sons, including experts in public budgeting and account-
17 ing.